directed against the assignment of the obligation resting on the lighting company to perform the work required by the contract, and was not intended to prevent the assignment of the money to be earned thereunder. That view was accepted by the trial court, but we think it is not warranted by a just interpretation of the language employed. The inhibition, it will be noticed, is not alone upon the assignment of the obligation to light the streets, but upon the assignment of the contract. What was the contract between the parties? Certainly one of its important elements was the duty laid upon the city to make monthly payments to the lighting company for the services rendered, and another was the correlative right of the company to receive such payments. The assignment of the October installment, if valid, not only transferred to the plaintiff a right secured to the lighting company by the contract, but affected, as well, an important obligation on the part of the city. It compelled the city to deal with strangers, and to determine at its peril which of the contesting claimants was entitled to the fund. This may have been one of the very contingencies contemplated by the city, and against which it sought to provide by making the contract non-assignable. Another object in view might have been to prevent the company from losing interest in the performance of the contract by devesting itself of all beneficial interest therein. But it is needless for us to speculate on the motives for the city's action. It is enough for us to know—whatever its reasons may have been—that it has, in plain language, stipulated against an assignment of the contract. That stipulation is valid, and must be enforced. To hold that it covers some, but not all, of the rights and obligations arising out of the contract, would be, it seems to us, an inexcusable perversion of its terms. In the case of *Burck* v. *Taylor*, 152 U. S. 635 (14 Sup. Ct. 696), where a contract with a State for the erection of a public building was made non-assignable by express stipulation, it was held that an attempted transfer of an interest in such contract, without the State's consent, was ineffectual, except, perhaps, to give the assignee a right of action against the contractor for a share of the profits."

An express stipulation against the assignment of a contract seems to be generally upheld. See *Zetterland* v. *Texas Land & Cattle Co.* (Neb.), 75 N. W. 860; *Delaware Co. Com'rs* v. *Diebold Safe & Lock Co.*, 133 U. S. 473 (10 Sup. Ct. 399); *Arkansas Val. Smelting Co.* v. *Belden Min. Co.*, 127 U. S. 379 (8 Sup. Ct. 1308); *Grigg* v. *Landis*, 19 N. J. Eq. 350; *Sloan* v. *Williams*, 138 Ill. 43 (27 N. E. 531); *Fortunato* v. *Patten*, 147 N. Y. 277; *Carter* v. *State* (S. Dak.), 65 N. W. 422; 2 Am. & Eng. Enc. Law (2d ed.), 1035.

Ex Post Facto Law—Police Power—Physicians.—In *Hawker* v. *People*, 18 Sup. Ct. 573, the Supreme Court of the United States was called upon to decide whether a statute of the State of New York prohibiting any person from practising medicine after the conviction of a felony, could be applied to a conviction had before the passage of the statute. The defendant, a physician, had been convicted in 1878 of the crime of abortion. In 1893 the legislature passed the statute in question. He continued to practise after the statute went into operation, and was tried, convicted and sentenced to punishment. On appeal to the Supreme Court of the United States, that court, through Mr. Justice Brewer (Justices Harlan, Peckham and McKenna dissenting), held that the statute was not *ex post facto*, and affirmed the judgment. The chief ground upon which the decision is

based is that the statute is a police measure, intended rather to protect the lives and health of the public than as a punishment of the offender.

Mr. Justice Brewer said in part:

"The single question presented is as to the constitutionality of this statute when applied to one who had been convicted of a felony prior to its enactment. Its unconstitutionality is alleged on the ground of an alleged conflict with article 1, sec. 10, of the constitution of the United States, which forbids a State to pass 'any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.' The arguments for and against this contention may be thus briefly stated.

"On the one hand, it is said that defendant was tried, convicted, and sentenced for a criminal offense. He suffered the punishment pronounced. The legislature has no power to thereafter add to that punishment. The right to practice medicine is a valuable property right. To deprive a man of it is in the nature of punishment, and, after the defendant has once fully atoned for his offense, a statute imposing this additional penalty is one simply increasing the punishment for the offense, and is *ex post facto*.

"On the other, it is insisted that, within the acknowledged reach of the police power, a State may prescribe the qualifications of one engaged in any business so directly affecting the lives and health of the people as the practice of medicine. It may require both qualifications of learning and of good character, and, if it deems that one who has violated the criminal laws of the State is not possessed of sufficient good character, it can deny to such a one the right to practice medicine; and, further, it may make the record of a conviction conclusive evidence of the fact of the violation of the criminal law, and of the absence of the requisite good character. In support of this latter argument, counsel for the State, besides referring to the legislation of many States prescribing in a general way good character as one of the qualifications of a physician, has made a collection of special provisions as to the effect of a conviction of felony.

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"We are of opinion that this argument is the more applicable, and must control the answer to this question. No precise limits have been placed upon the police power of a State, and yet it is clear that legislation which simply defines the qualifications of one who attempts to practice medicine is a proper exercise of that power. Care for the public health is something confessedly belonging to the domain of that power. The physician is one whose relations to life and health are of the most intimate character. It is fitting, not merely that he should possess a knowledge of diseases and their remedies, but also that he should be one who may safely be trusted to apply those remedies. Character is as important a qualification as knowledge, and if the legislature may properly require a definite course of instruction, or a certain examination as to learning, it may with equal propriety prescribe what evidence of good character shall be furnished. These propositions have been often affirmed. In *Dent* v. *West Virginia*, 129 U. S. 114, 122, 9 Sup. Ct. 231, 233, it was said in respect to the qualifications of a physician: 'The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud.'

"We note also these further declarations from State courts: In *State* v. *State*

Medical Examining Board, 32 Minn. 324, 327, 20 N. W. 238, 240, it was said: 'But the legislature has surely the same power to require, as a condition of the right to practice this profession, that the practitioner shall be possessed of the qualification of honor and good moral character as it has to require that he shall be learned in the profession. It cannot be doubted that the legislature has authority, in the exercise of its general police power, to make such reasonable requirements as may be calculated to bar from admission to this profession dishonorable men, whose principles or practices are such as to render them unfit to be intrusted with the discharge of its duties.' In *Thompson* v. *Hazen*, 25 Me. 104, 108: 'Its authors were careful that human health and life should not be exposed without some restraint, by being committed to the charge of the unprincipled and vicious. It could not have been intended that persons destitute of the moral qualifications required should have full opportunity to enter professionally the families of the worthy but unsuspecting, and be admitted to the secrets which the sick chamber must often intrust to them.' In *State* v. *Hathaway*, 115 Mo. 36, 47, 21 S. W. 1083: 'The legislature, then, in the interest of society, and to prevent the imposition of quacks, adventurers, and charlatans upon the ignorant and credulous, has the power to prescribe the qualifications of those whom the State permits to practice medicine. . . . And the objection now made that because this law vests in this board the power to examine, not only into the literary and technical acquirements of the applicant, but also into his moral character, it is a grant of judicial power, is without force.' In *Eastman* v. *State*, 109 Ind. 278, 279, 10 N. E. 98: 'It is, no one can doubt, of high importance to the community that health, limb, and life should not be left to the treatment of ignorant pretenders and charlatans. It is within the power of the legislature to enact such laws as will protect the people from ignorant pretenders, and secure them the services of reputable, skilled, and learned men.' In *State* v. *Call* (N. C.), 28 S. E. 517: 'To require this is an exercise of the police power for the protection of the public against incompetents and impostors, and is in no sense the creation of a monopoly of special privileges. The door stands open to all who possess the requisite age and good character, and can stand the examination which is exacted of all applicants alike.'

"But if a State may require good character as a condition of the practice of medicine, it may rightfully determine what shall be the evidences of that character. We do not mean to say that it has an arbitrary power in the matter, or that it can make a conclusive test of that which has no relation to character, but it may take whatever, according to the experience of mankind, reasonably tends to prove the fact and make it a test. *County Seat of Linn Co.*, 15 Kan. 500–528. Whatever is ordinarily connected with bad character, or indicative of it, may be prescribed by the legislature as conclusive evidence thereof. It is not the province of the courts to say that other tests would be more satisfactory, or that the naming of other qualifications would be more conducive to the desired result. These are questions for the legislature to determine. . . . *Dent* v. *West Virginia*, 129 U. S. 122, 9 Sup. Ct. 233.

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"That the form in which this legislation is cast suggests the idea of the imposition of an additional punishment for past offenses is not conclusive. We must look at the substance, and not the form; and the statute should be regarded as though it in terms declared that one who had violated the criminal laws of the

State should be deemed of such bad character as to be unfit to practice medicine, and that the record of a trial and conviction should be conclusive evidence of such violation. All that is embraced in these propositions is condensed into the single clause of the statute, and it means that, and nothing more. The State is not seeking to further punish a criminal, but only to protect its citizens from physicians of bad character. The vital matter is not the conviction, but the violation of law. The former is merely the prescribed evidence of the latter. Suppose the statute had contained only a clause declaring that no one should be permitted to act as a physician who had violated the criminal laws of the State, leaving the question of violation to be determined according to the ordinary rules of evidence; would it not seem strange to hold that that which conclusively established the fact effectually relieved from the consequences of such violation?

"It is no answer to say that this test of character is not in all cases absolutely certain, and that sometimes it works harshly. Doubtless, the one who has violated the criminal law may thereafter reform, and become in fact possessed of a good moral character. But the legislature has power in cases of this kind to make a rule of universal application, and no inquiry is permissible back of the rule to ascertain whether the fact of which the rule is made the absolute test does or does not exist. Illustrations of this are abundant. At common law, one convicted of crime was incompetent as a witness; and this rule was in no manner affected by the lapse of time since the commission of the offense, and could not be set aside by proof of a complete reformation. So, in many States a convict is debarred the privileges of an elector, and an act so debarring was held applicable to one convicted before its passage. *Washington* v. *State*, 75 Ala. 582. In *Foster* v. *Commissioners*, 102 Cal. 483, 492 (37 Pac. 763), the question was as to the validity of an ordinance revoking a license to sell liquor on the ground of misconduct prior to the issue of the license, and the ordinance was sustained. In commenting upon the terms of the ordinance the court said: 'Though not an *ex post facto* law, it is retrospective in so far as it determines from the past conduct of the party his fitness for the proposed business. Felons are also excluded from obtaining such a license, not as an additional punishment, but because the conviction of a felony is evidence of the unfitness of such persons as a class; nor can we perceive why such evidence should be more conclusive of unfitness were the act done after the passage of the ordinance than if done before.' In a certain sense such a rule is arbitrary, but it is within the power of a legislature to prescribe a rule of general application based upon a state of things which is ordinarily evidence of the ultimate fact sought to be established. 'It was obviously the province of the State legislature to provide the nature and extent of the legal presumption to be deduced from a given state of facts, and the creation by law of such presumption is, after all, but an illustration of the power to classify.' *Jones* v. *Brim*, 165 U. S. 180, 183 (17 Sup. Ct. 282).

'Defendant relies largely on *Cummings* v. *Missouri*, 4 Wall. 277, and *Ex parte Garland*, 4 Wall. 333. In the first of these cases, a test oath, containing some thirty distinct affirmations respecting past conduct, extending even to words, desires, and sympathies, was prescribed by the State of Missouri upon all pursuing certain professions or avocations; and, in the second, a similar oath, though not so far-reaching in its terms, was required by act of Congress of those who sought to appear as attorneys and counselors in the courts of the United States. It was

held that, as many of the matters provided for in these oaths had no relation to the fitness or qualification of the two parties, the one to follow the profession of a minister of the gospel, and the other to act as an attorney and counselor, the oaths should be considered, not legitimate tests of qualification, but in the nature of penalties for past offenses. These cases were called to our attention in *Dent* v. *West Virginia*, *supra*, in which the validity of a statute of West Virginia imposing new qualifications upon one already engaged in the practice of medicine was presented for consideration. After pointing out the distinguishing features of those cases, this court summed up the matter in these words (page 188, 129 U. S. and page 235, 9 Sup. Ct.):

"'There is nothing in these decisions which supports the positions for which the plaintiff in error contends. They only determine that one who is in the enjoyment of a right to preach and teach the Christian religion as a priest of a regular church, and one who has been admitted to practice the profession of the law, cannot be deprived of the right to continue in the exercise of their respective professions by the exaction from them of an oath as to their past conduct, respecting matters which have no connection with such professions. Between this doctrine and that for which the plaintiff in error contends there is no analogy or resemblance. The constitution of Missouri and the act of Congress in question in those cases were designed to deprive parties of their right to continue in their professions for past acts or past expressions of desires and sympathies, many of which had no bearing upon their fitness to continue in their professions. The law of West Virginia was intended to secure such skill and learning in the profession of medicine that the community might trust with confidence those receiving a license under authority of the State.'

"*Ex parte Wall*, 107 U. S. 265 (2 Sup. Ct. 569), is also worthy of notice. In that case the circuit court had stricken the petitioner's name from the roll of practising attorneys, on the ground that he had committed a crime, although not in the presence of the court, nor interfering with it in the discharge of its duties. The petitioner here insisted that the act which was charged against him was one for which he was, if guilty, liable to trial and conviction under the law of the State, and that the Federal court had no power on account of such act (one having no connection with his obligations to that court) to disbar him. In reply to this contention, it was said (page 273, 107 U. S., and page 575, 2 Sup. Ct.):

"'It is laid down in all the books in which the subject is treated that a court has power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients, and to punish them by fine and imprisonment for misconduct and contempts, and, in gross cases of misconduct, to strike their names from the roll. If regularly convicted of a felony, an attorney will be struck off the roll as of course, whatever the felony may be, because he is rendered infamous. If convicted of a misdemeanor which imports fraud or dishonesty, the same course will be taken. He will also be struck off the roll for gross malpractice or dishonesty in his profession. . . . Where an attorney was convicted of theft, and the crime was condoned by burning in the hand, he was, nevertheless, struck from the roll. 'The question is,' said Lord Mansfield, 'whether, after the conduct of this man, it is proper that he should continue a member of a profession which should stand free from all suspicion. . . . It is not by way of punishment; but the court in such cases exercise their discretion

whether a man whom they have formerly admitted is a proper person to be continued on the roll or not.'

"The thought which runs through these cases and others of similar import which might be cited is that such legislation is not to be regarded as a mere imposition of additional penalty, but as prescribing the qualifications for the duties to be discharged and the position to be filled, and naming what is deemed to be, and what is in fact, appropriate evidence of such qualifications.

"In *Gray* v. *Connecticut*, 159 U. S. 74, 77 (15 Sup. Ct. 986), this court considered the effect of a statute prescribing additional qualifications for one acting as a pharmacist who already had a license from the State therefor, and said: 'Whatever provisions were prescribed by the law previous to 1890, in the use of spirituous liquors in the medicinal preparations of pharmacists, they did not prevent the subsequent exaction of further conditions which the lawful authority might deem necessary or useful.' See also *Foster* v. *Commissioners*, *supra*, and *State* v. *State Board of Medical Examiners*, 34 Minn. 387 (26 N. W. 123)."

Payments indorsed on the back of a note before its transfer to the payee are held, in *Farmers' Bank* v. *Shippey* (Pa.), 38 L. R. A. 823, to be insufficient to destroy its negotiability. The other cases on the subject are collected in a note to this case.